

IAP5ants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

New York, N.Y.

v.

18 Cr. 101 (PAC)

CASEY MICHAEL ANTONE,

Defendant.

-----x

October 25, 2018
12:45 p.m.

Before:

HON. PAUL A. CROTTY,

DISTRICT Judge

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

BY: BENJAMIN W. SCHRIER

JESSICA GREENWOOD

Assistant United States Attorneys

NICHOLAS, GOODMAN & ASSOCIATES, PLLC

Attorneys for Defendant

BY: CAMILLE M. ABATE

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(Case called)

THE DEPUTY CLERK: Counsel for the government, please state your appearance.

MR. SCHRIER: Good afternoon, your Honor. Benjamin Schrier and Jessica Greenwood for the government.

THE COURT: Mr. Schrier, Ms. Greenwood. Hello.

MS. ABATE: Good afternoon, your Honor. For the defense, Camille Abate, and seated next to me is my client the defendant, Casey Antone.

THE COURT: Ms. Abate.

Mr. Antone, how are you doing?

THE DEFENDANT: I'm okay. Thank you.

THE COURT: Has everybody seen the presentence report, the one that's revised as of September 18, 2018?

MR. SCHRIER: Yes, your Honor.

MS. ABATE: Yes, your Honor.

THE COURT: Any comments you want to make, or corrections you want to make, Ms. Abate?

MS. ABATE: Yes. No, your Honor. I have no corrections to it.

THE COURT: I am going to accept the facts as set forth in the presentence report as accurate.

The presentence report calculates the guidelines as follows. The offense level of 19, criminal history category of I, resulting in a guideline range of 30 to 37 months.

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1 Is that accurate as well, Ms. Abate?

2 MS. ABATE: Yes, Judge.

3 THE COURT: I am going to accept that as accurate.

4 Ms. Abate, I have read your submission but I am sure
5 you want to elaborate on it.

6 MS. ABATE: Your Honor, the gravamen of my submission
7 is to ask the Court, in addition to the details where
8 Mr. Antone should be released to and recommended a place of
9 incarceration, the gravamen of my submission is to seek a
10 sentence based on the 3553 factors below the guideline range
11 set out due to certain important information.

12 The first thing is the history and character of the
13 defendant and it was never fully developed either in
14 presentence investigation or before as to why Mr. Antone
15 pursued the type of life he did after he graduated from Elan
16 School.

17 Mr. Antone is an extremely intelligent individual
18 and -- it was not even clear why he was sent to that school but
19 as the Court can see from the submissions, it was basically as
20 one former student said, worse than being a prisoner of war in
21 an enemy territory. It had a tremendous impact on him and it
22 was an impact that affected his relationship to his family
23 which is acknowledged by Mr. Antone in his letter to be
24 strained, and explains a lot of why he essentially fled his
25 family for so many years.

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1 I can't speak as a psychologist as to what it did to
2 him but, as I said in my submission, people who go through
3 brutal serious physical and mental abuse do tend to get damaged
4 and lose the ability to empathize with others, they
5 compartmentalize, they protect themselves and I believe that
6 Mr. Antone, the result of this is that Mr. Antone could not
7 have normal personal relationships with people and difficulty
8 relating to authority and, therefore, it is no longer
9 surprising to me that he pursued a life that was nonviolent but
10 that was out of what the society expects people to do.

11 He was young at the time that he started on this road
12 and the road was a road of basically committing theft crimes,
13 money crimes, crimes to make money. He is not a rich person
14 and I don't think he ever got rich but I think what it speaks
15 to is an ability to deal with people on a day-to-day basis in a
16 working environment.

17 He is now 45 years old. He has, during the course of
18 this prosecution, done programs in jail. I have spoken to him
19 at length about the type of choices he made and I know that he
20 has spoken to people in the programs that he has attended in
21 jail about the types of choices he made and I believe, based on
22 all of my knowledge of him at this point, that he will cease to
23 do this kind of theft.

24 I do --

25 THE COURT: Why do you say that? Because when he was

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1 thrown out of Europe by the Dutch, he came to the United States
2 and started doing the same thing. You would think that a man
3 of his intelligence would know I can't get away with this
4 anymore.

5 MS. ABATE: It doesn't have any -- there is no
6 rational reason I can provide the Court for why he continued
7 here. The only reason I can see, and it's one of the reasons
8 why I took so much time about the Elan School, is that he was
9 somehow damaged and not understanding intellectually, I think
10 he could understand, but I think emotionally it's one of the
11 reasons why he drank to the point of intoxication during the
12 months before he was arrested. He was not able to connect with
13 people in a more --

14 THE COURT: You make much of the point that he didn't
15 rob from individuals, he robbed from corporations.

16 MS. ABATE: And I think that's --

17 THE COURT: Not much of a defense in my view, but.

18 MS. ABATE: Well, it is not a defense, really, it
19 shows that --

20 THE COURT: Nor is it an explanation or a
21 justification.

22 MS. ABATE: What I think it is significant for, your
23 Honor, is that he has at least the understanding that
24 individual people were not to be preyed upon. There are people
25 who are damaged and I am sure the Court has seen many people

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1 who have experienced abuse in their childhood who have gone on
2 to prey upon other people. He has not done that. I mean, he
3 has done a kind of fantasy, almost it appears to me, that the
4 nature of the crime if you want my personal opinion, is almost
5 like an academic exercise, a mathematical exercise. You sit
6 there in front of a computer, you don't talk to anybody, you
7 are creating numbers in your head and seeing if you hit, almost
8 like a video game, kind of a mathematical interaction with
9 nobody, and maybe delusions that he is being Robin Hood that he
10 is taking money from American Express but is selling discount
11 tickets to people for travel from Boston to New York or from
12 California to Florida.

13 That's not an excuse and I want to make sure that the
14 Court understands, I'm not saying that it justifies what he did
15 but I think this is the fantasy world that he was living in and
16 that fantasy world is born of the inability, from the time he
17 graduated from Elan School, to really connect in a more
18 meaningful way with human beings.

19 It is kind of sad, actually, that someone would sit in
20 front of a computer for hours upon -- I am talking about hours
21 upon hours upon hours, 20, 30 hours at a time, just playing
22 numbers in their head. It is sad. And it is evidence, I
23 think, of what he suffered in his youth. I'm not asking the
24 Court to sympathize to the point of saying, oh, well. We will
25 let him go, but I am explaining to the Court that he limited

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1 damages. He did not go out on the street with an access device
2 and take personal people's numbers. He did not steal a purse
3 from somebody or steal their valuables or try and invade their
4 pension funds. You know, there is no identity theft charge
5 here. Ironically, and the facts in the PSR show it, everything
6 was in his own name. It was actually very easy for the
7 government to follow him because his e-mails were Casey Michael
8 Antone or Antone Casey. There was always something to do with
9 his own name. He didn't steal anybody's identity. So, does it
10 make him a saint? No, it doesn't make him a saint. Does it
11 excuse what he did? It doesn't. But, the sentencing
12 guidelines have enhancements for vulnerable victims and for
13 stealing from pensions and things of that nature, stealing from
14 more than one vulnerable victim and he does not get any of
15 those enhancements because that's not what he did. So, the
16 sentencing guidelines recognizes that is a more severe type of
17 crime and he refrained from doing that.

18 I do want to say that while there is no predictor of
19 success in the future, I think that this is the longest period
20 of incarceration in an actual institution that he has had. He
21 was in the federal camp back when he was young that he was sent
22 to for one crime, but he has never really been incarcerated for
23 a period of time, as he has here, and as he will be with
24 whatever sentence the Court chooses to give him on top of the
25 nine months that he has already done here at MCC as a pretrial

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1 detainee. And the effect of having been incarcerated for this
2 period of time has been to make him use his intelligence and
3 realize that the way he has been doing is wrong.

4 I actually think that at some point he thought there
5 was never going to be any consequences for him for this theft
6 and now there is and the consequence is that he has been
7 incarcerated and not able to be in front of a computer and talk
8 to people who are his friends and to really make himself live
9 with himself. And I think the fact that he did productive
10 things while incarcerated, that he did do two or three programs
11 that he helped initiate -- reinitiate the tutoring program for
12 GED which was abandoned because there was not anyone who could
13 help teach it, I think that speaks to his attempts to try and
14 make himself into a better person.

15 Within the things that he did while he was committing
16 all of these crimes, he was generous to people that he
17 considered his friends, as the letters show.

18 THE COURT: They were very nice letters.

19 MS. ABATE: But, so I ask the Court to consider that
20 the history and characteristics you heavily, heavily influenced
21 by the abuse he suffered as a 15 or 13 to 18-year-old in high
22 school in this bizarre, punitive, quasi-military and torture
23 chamber called Elan School, and I think that that is the
24 ultimate effect that caused him to take this path and I would
25 ask the Court to also consider that this is a nonviolent

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1 economic crime and that once American Express is made whole
2 with the restitution, it's not -- there is no real need to
3 punish him excessively with incarceration. The best thing that
4 could happen to Mr. Antone is that he be made to work for his
5 money and that he be made to pay this back.

6 In terms of serving society and deterring future
7 conduct of this nature, any sentence of incarceration, even a
8 12-month sentence of incarceration would serve that purpose. I
9 think it has already served that purpose, as Mr. Antone, I
10 hope, will tell you.

11 So, not every crime needs an excessive amount of
12 incarceration as punishment.

13 THE COURT: So, do you have a recommendation?

14 MS. ABATE: Yes, your Honor. I would ask that the
15 Court sentence him to a year and a day, essentially, with a
16 halfway house right afterwards for a period of six months.

17 THE COURT: Now, the government handed up this morning
18 a forfeiture order. You have signed that, Ms. Abate?

19 MS. ABATE: Yes.

20 THE COURT: That means it is appropriate?

21 MS. ABATE: Yes.

22 THE COURT: The government is also going to submit an
23 order of restitution in the same amount in, what, 75 days?

24 MS. GREENWOOD: I believe it is within 90 days, your
25 Honor.

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1 MS. ABATE: What is within 90 days? I'm sorry.

2 THE COURT: The order of restitution in the amount of
3 \$207,000.

4 MS. ABATE: He will not be able to start paying it
5 back until after he is released from incarceration but, yes, he
6 is absolutely willing to pay it and suffer forfeiture if he
7 does not pay it back.

8 THE COURT: Okay, Mr. Schrier, Ms. Greenwood?

9 Mr. Schrier.

10 MR. SCHRIER: Yes, your Honor.

11 As your Honor now knows from reviewing the
12 government's written submission, the government believes that a
13 guideline sentence would be appropriate in this case primarily
14 for the reasons enunciated in the PSR, the characteristics of
15 the defendant, and the seriousness of the offense.
16 Specifically, however, I did want to address some of the points
17 that defense counsel made in her written submission and also
18 orally.

19 First, your Honor, a point that your Honor asked
20 defense counsel about, the idea that because American Express
21 was the victim, because the victim was a corporate entity, that
22 somehow mitigates the crime, somehow suggests that there are
23 mitigating circumstances at play, and on that note in defense
24 counsel's --

25 THE COURT: I don't think it is mitigating so much as

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1 it could have been worse.

2 MR. SCHRIER: Certainly, your Honor, but obviously as
3 your Honor knows, committing a fraud against a corporate entity
4 is a very serious offense within the statutory language. It is
5 also not correct that individuals were somehow not affected by
6 this crime. For example, we know of at least one traveler who
7 bought an Amtrak voucher through Mr. Antone whose travel plans
8 were disrupted. He or she was stopped during travel because
9 the travel voucher was fraudulent. There are also a number of
10 other vendors who are victims in this case, not just American
11 Express, vendors of varying sizes. And, we also want you to
12 know, your Honor, that in defense counsel's submission, defense
13 counsel argues that the fact that American Express was a victim
14 suggests something about Mr. Antone's moral capacity. It is
15 the government's position that Mr. Antone targeted corporate
16 accounts because they had fewer security features than personal
17 accounts at times and that they were easier to exploit. So, we
18 don't believe it is evidence of moral character at all, only
19 evidence of sophistication in perpetrating this fraud.

20 On the point, your Honor, of recidivism and whether a
21 sentence within the guidelines is necessary to ensure that
22 Mr. Antone will not engage in this type of fraud in the future,
23 we note that in the e-mail that Mr. Antone sent to the in-house
24 American Express investigator, he noted that he was essentially
25 being given a second chance when he was deported from the

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1 Netherlands where he had been charged with a crime and where he
2 served only 14 days in detention. He said, I look at this as a
3 gift, Simon, and a new chance in life to start fresh legally
4 for once because now I can. Almost immediately the defendant
5 began engaging in the exact same type of credit card fraud that
6 he engaged in in the Netherlands.

7 He has previously served time only up to two years.
8 That clearly was not sufficient to deter him from engaging in
9 this type of fraud after those sentences so we believe a
10 guideline sentence is also appropriate for that reason, for
11 deterrence on this particular defendant.

12 Also, your Honor, I wanted to take issue with some of
13 the representations that defense counsel is making regarding
14 the Elan School. In defense counsel's submission there is
15 significant information provided, mostly from publicly
16 available media sources about the Elan School but there is no
17 evidence in defense counsel's submission, in the defendant's
18 letter or in the PSR tying Mr. Antone specifically to any of
19 the odious practices and abuses at the Elan School. There
20 hasn't even been a representation by defense counsel that
21 Mr. Antone suffered any trauma as a result of those conditions.

22 The government is not denying that Mr. Antone may have
23 suffered trauma as a result of attending the Elan School but
24 there is simply nothing in the record on which the Court could
25 base a finding that he had and take that into account at

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1 sentencing. And defense counsel is in the best position to
2 discuss that issue with Mr. Antone, provide specific evidence
3 on that front.

4 Just a couple of other smaller points, your Honor,
5 about some of those?

6 THE COURT: Yes.

7 MR. SCHRIER: I apologize your Honor?

8 THE COURT: I said, yes, go ahead.

9 MR. SCHRIER: Some of the representations, factual
10 representations that defense counsel made just now, first, the
11 idea that the crimes were easy to track because all of the
12 accounts were in Mr. Antone's name. That is simply not the
13 case. Some of the accounts that he used did incorporate
14 elements of his name but others did not, many others did not,
15 and ultimately the government had to use commonality of IP
16 addresses and Google cookies in order to detect all of the
17 instances of the fraud.

18 I also wanted to note, your Honor -- actually, that's
19 it, your Honor. That's the only other point I wanted to make.

20 Thank you.

21 THE COURT: Thank you very much.

22 Mr. Antone, this is your opportunity to speak if you
23 wish to do so. You can remain seated if you are more
24 comfortable.

25 THE DEFENDANT: Thank you, your Honor.

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1 Thank you. I have submitted a letter to the Court.

2 THE COURT: Yes.

3 THE DEFENDANT: And I would like to apologize once
4 again for my poor choices. And I didn't write anything today
5 that I was planning to say, I thought I was just going to
6 apologize, but I do want to address at least one thing
7 regarding the Elan School. I never really spoke to -- I didn't
8 speak to the PSI investigator, Ms. Belgrave about it other than
9 mentioning that I went to the school thinking that I was just
10 mentioning where I went to school at. And, pretty much the
11 same with Ms. Abate, I didn't go into it too much.

12 My time at the Elan School was a difficult time. My
13 parents thought they were sending me to a boarding school and
14 just to help me graduate high school because I was hanging out
15 with the wrong crowd and it wasn't really a boarding school.
16 School was just two hours a night every evening and the rest of
17 the day was groups and counseling -- what they would call
18 counseling. Unlike anything I had ever seen or experienced
19 before.

20 So, it was a very difficult time and I think
21 describing it as difficult is probably a bit generous but it
22 was -- it is nothing I like to talk about, it is nothing I like
23 to think about, and to be honest, I wish it didn't come up in
24 this court proceeding but it did and so I just wanted to
25 address that part of it.

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1 The past nine months have been pretty difficult for
2 me. When I came back from Europe and I was deported I didn't
3 really have a plan. I had nowhere to go, really, I didn't
4 really know what I was going to do, and then I stayed involved
5 in the same thing that I was doing until I was arrested. And I
6 am sitting in MCC for a long time and then transferred to
7 Westchester until today.

8 I have seen a lot also there during that time and I
9 have tried to occupy myself and do the best I could during that
10 time by helping people which was helping myself and, most
11 importantly, I developed what I think is a better support
12 structure for me for when I do get released. I'm going to be
13 46 years old in just a couple days and I think this is not the
14 life I want for myself and it's not the life that anybody who
15 knows me or loves me wants for me. My decisions were bad and I
16 could have and should have done a lot better and from this
17 point forward I plan on doing so.

18 Thank you, your Honor.

19 THE COURT: Thank you very much, Mr. Antone.

20 Anybody else want to be heard?

21 MR. SCHRIER: No, your Honor.

22 MS. ABATE: Your Honor, I just want to, I didn't
23 address the details of what I requested. I just wanted to
24 remind the Court that I am asking that you give credit to
25 Mr. Antone for the 14 days he spent incarcerated in Holland.

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1 THE COURT: Yes.

2 MS. ABATE: And as well as recommending --

3 THE COURT: Albuquerque?

4 MS. ABATE: Yes.

5 THE COURT: And supervised in the district of his
6 residence, he intends to reside in Albuquerque.

7 MS. ABATE: Yes, Judge.

8 THE COURT: Okay.

9 MS. ABATE: Thanks.

10 THE COURT: Well, I have considered the PSR. I have
11 got the government's submission and I appreciate the
12 government's submission. I certainly appreciate Ms. Abate's
13 submission and Mr. Antone's letter, as well as the letters of
14 support from friends and family.

15 Just let me tell you what we are doing here. I am
16 proceeding under 18 U.S.C. 3553 where I have to consider, in
17 imposing the sentence, the nature and characteristics of the
18 offense, the history and characteristics of the defendant. And
19 certainly, in connection with the characteristics and history
20 of the defendant Mr. Antone, I will consider the school that he
21 attended and the impact that it had on his psychology. But I
22 also have to consider a sentence that reflects the seriousness
23 of the offense to promote respect for the law and to provide
24 just punishment for the offense, to afford adequate deterrence
25 to criminal conduct, to protect the peoples from further crimes

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1 of the defendant, and to provide the defendant with needed
2 educational or vocational training, medical care, or any other
3 correctional treatment in the most effective manner.

4 I have to start with the guidelines and the guidelines
5 here are 19 -- offense level of 19 and Criminal History
6 Category of I, resulting in a guideline sentence of 30 to 37
7 months. That's the starting point. I have applied various
8 discounting factors to that because one of the enhancements for
9 the amount of money involved in the crime I think distorts the
10 seriousness of the crime.

11 I don't buy the argument that non-violent economic
12 crimes are to be judged in a manner different than other crimes
13 where you have individual loss. I think the offense is the
14 theft that occurs and here it occurred. It also occurred in
15 special circumstances. Mr. Antone, after he was returned to
16 the United States from Holland, started on the same course of
17 conduct that led to his being asked to leave Holland and being
18 deported from Holland. So, that's a very serious matter. Our
19 economic systems depend on honesty and integrity so this is a
20 serious offense to sentence at too low a level and I think
21 Ms. Abate's recommendation would be too low, would not promote
22 respect for the law, but would promote disrespect for the law,
23 would not afford an adequate deterrence, and that as much as
24 Mr. Antone says he is not going to do it again, the fact of the
25 matter is, the crime that brings us together is something he

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1 did again right after he was thrown out of Europe for doing the
2 very same thing.

3 On the other hand, he seems to have tried, he is
4 older, perhaps with the sentence that I am going to impose when
5 he gets out he will be more responsible than has been to date.
6 I am going to impose a sentence of -- I am going to tell you
7 what I am going to impose, Ms. Abate, and then you can object
8 at the end before I impose it.

9 I am going to impose a sentence of 26 months, a term
10 of supervised release of three years. There will be no
11 probation. There will be an order of forfeiture in the amount
12 of \$207,006.34. The government has 90 days in which to submit
13 an order of restitution also in the amount of \$207,006.34. I
14 must impose a special assessment of \$100 and I am going to do
15 that.

16 The defendant subject to the mandatory conditions and
17 the standard conditions as well, plus the following special
18 conditions:

19 Mr. Antone is to participate in an inpatient treatment
20 program approved by the probation office, which program may
21 include testing to determine whether he has reverted to using
22 drugs or alcohol and he has to contribute to the cost of
23 services rendered based on his ability to pay and the
24 availability of third-party payments. I authorize the release
25 of available drug treatment evaluations and reports including

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1 the presentence investigation report to the substance abuse
2 treatment provider.

3 Mr. Antone has to provide the probation officer with
4 access to any requested financial information and he can't
5 incur new credit card charges or open additional lines of
6 credit without the approval of the probation office unless he
7 is in compliance with an installment payment schedule.

8 I will recommend that Mr. Antone serve his sentence in
9 a minimum security prison close to the city of Albuquerque, New
10 Mexico, and specifically I guess that's the federal FCI La Tuna
11 in Anthony, Texas.

12 Also, since Mr. Antone intends to live in Albuquerque,
13 I will recommend that his supervision be supervised in the
14 district of his residence which is going to be Albuquerque, New
15 Mexico. I realize that may change.

16 I have already told you about the restitution. I have
17 signed the order of forfeiture. I must impose a special
18 assessment of \$100 and I do so.

19 That's the sentence I intend to impose, Ms. Abate.
20 Any objections other than the ones you voiced?

21 MS. ABATE: Did I hear you say your special conditions
22 are an inpatient treatment program? Did I hear that correctly?

23 THE COURT: That's the recommendation in the
24 presentence report, to participate in an inpatient treatment
25 program approved by the probation office.

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1 MS. ABATE: Your Honor, I am not sure they have
2 inpatient treatment programs for alcoholism.

3 THE COURT: Drugs or alcohol.

4 MS. ABATE: Okay.

5 And Mr. Antone would like to do the RDAP program, if
6 it is possible, in the amount of time.

7 THE COURT: I will make that recommendation as well.
8 I'm not sure whether FCI La Tuna provides RDAP but if it does,
9 I will make the recommendation.

10 MS. ABATE: Okay, Judge.

11 THE COURT: I will make the recommendation anyway.

12 MS. ABATE: Yes, I believe they do. Thank you.

13 THE COURT: Does the government have any objections?

14 MR. SCHRIER: No, your Honor.

15 THE COURT: Okay. The sentence is imposed.

16 Mr. Antone, now that I have imposed sentence I have to
17 advise you, you have the right to appeal the sentence, although
18 in the plea agreement you agreed not to appeal any sentence
19 within or below the guideline range of 30 to 37 months and
20 Ms. Abate can advise you on that further. If you can't forward
21 to pay the costs of appeal you can appeal in forma pauperis.
22 If you so request, my clerk will prepare and file a notice of
23 appeal on your behalf. The notice of appeal has to be filed
24 within 14 days of the entry of judgment. Judgment will be
25 entered by close of business today.

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1 Any open counts?

2 MR. SCHRIER: Yes, your Honor. There are three open
3 counts on the indictment, 2, 3, and 4.

4 THE COURT: We will dismiss them.

5 MR. SCHRIER: The government asks that they be
6 dismissed.

7 THE COURT: Counts 2, 3 and 4 of the indictment will
8 be dismissed.

9 MS. ABATE: I'm sorry, your Honor. 14 days credit for
10 Holland, the incarceration there?

11 THE COURT: I think in imposing the sentence of 26
12 months I took that into consideration.

13 MS. ABATE: Okay, thank you.

14 THE COURT: If there is nothing else, thank you very
15 much.

16 MR. SCHRIER: Thank you, your Honor.

17 MS. ABATE: Thank you.

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